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1 people that delayed you getting the
2 surgery?

3 MR. TINNEY: Now, I'm going to,
4 again, object, you know, to that. And I
5 guess I've got to instruct him to not
6 answer that question because the
7 decision -- you know, the decision as to
8 why he didn't get it didn't come from
9 him.

10 MR. BROWN: I understand.

11 MR. TINNEY: And he can't really
12 state, you know, what was the reason.
13 They were up there saying, you know,
14 we've got to get two doctors to look at
15 it. And that appears to be, you know,
16 what they were telling him. And we don't
17 know what the issue was between, you
18 know, them and the doctors. So, we
19 really can't state.

20 MR. BROWN: Okay.

21 Q. But in addition to her telling
22 you that she wanted to have other doctors
23 look at it --

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1 A. Yes.

2 Q. -- she was also telling you that
3 it couldn't be approved until they got
4 all the paperwork from the doctor?

5 A. That's what she said.

6 Q. Okay. So, wanting to -- her
7 telling you allegedly that she wanted to
8 have it looked at by another doctor was
9 not the only reason that she told you
10 that she couldn't schedule surgery yet?

11 A. She just said she had to have
12 two more doctors look at it.

13 Q. And that she didn't have all the
14 documents or the paperwork from
15 Dr. Howorth's office; right?

16 A. Well, he told me he sent it the
17 same week she asked for it.

18 Q. Okay.

19 A. I called him myself. He said, I
20 sent everything I've got. It's up to her
21 now."

22 Q. And I understand that. But she
23 was also telling you -- while the doctor

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1 was saying, "I did it all," she was
2 saying, "No, they haven't done it all."

3 A. Yeah.

4 Q. Okay.

5 A. And I was suffering.

6 Q. Did you ever make any phone
7 calls to them from any place other than
8 your mother's house or your
9 mother-in-law's house, the two numbers
10 you gave me earlier?

11 A. No.

12 Q. Oh. I think you said you called
13 them one time from the store?

14 A. I called them one time from the
15 store.

16 Q. Do you have copies of any of
17 your phone bills or your mother-in-law's
18 phone bills or your mother's phone bill
19 from that time?

20 A. I don't know what my
21 mother-in-law done with them.

22 Q. Okay.

23 A. She's 74 years old. I don't

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1 know what she done with them.

2 Q. I understand. Did you have to
3 pay her back for the long distance phone
4 calls?

5 A. No. She told me not to worry
6 about it.

7 MR. TINNEY: Did we establish
8 whether that was an 800 number or not?

9 MR. BROWN: You know, I don't
10 know.

11 Q. Do you remember the number that
12 you called out there to CMI?

13 A. I got it here somewhere. I was
14 supposed to have had it in here. I can't
15 find it now. Victoria, workman's comp,
16 1-800-527-0566, extension 20 --

17 Q. Well, hold on a minute. You
18 were talking faster than I can write.
19 (800) 527 --

20 A. (800) 527-4566, extension 20776.
21 That's Victoria, workman's comp.

22 Q. Okay. Is that a business card
23 that you have here?

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1 A. No. It's just a notebook I got
2 all my doctors wrote down, all my
3 medications I'm on, every doctor I've
4 went to and everything.

5 MR. BROWN: Would you object if
6 I looked at that?

7 MR. TINNEY: Let me look at it
8 first.

9 MR. BROWN: Okay.

10 THE WITNESS: It's just -- I got
11 every doctor wrote down where I was
12 trying to get my disability and where I,
13 you know, had to send to get my medical
14 records and first one thing and then
15 another.

16 Q. (By Mr. Brown) And other than
17 the one conversation that you had with
18 Dr. Howorth on the day you had surgery
19 where he said if we hadn't waited so
20 long, we could have done it a different
21 way --

22 A. He said he could have lasered it
23 back.

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1 Q. Okay. Has any other doctor told
2 you that your shoulder condition now is
3 the result of it taking too long to get
4 approval to have surgery?

5 A. No, because I've not been to
6 another one.

7 Q. Okay. And the only time
8 Dr. Howorth told you that was the day you
9 had the surgery itself?

10 A. Yes. He said, "I had to put
11 pins in it, and it was so full of
12 bursitis that I couldn't laser it, so I
13 had to do the best I could with it and
14 put pins in it to hold it.

15 Q. And he didn't repeat that
16 conversation during any of your office
17 visits, did he?

18 A. No. He just told me after he
19 x-rayed it one time, one of the screws
20 looked like it had moved and was
21 scrubbing my shoulder bone.

22 Q. I got you.

23 A. And he said that could be the

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1 problems with my therapy the reason I was
2 having so much pain with my therapy.

3 MR. TINNEY: I don't have a
4 problem with you looking at it.

5 THE WITNESS: It's just a bunch
6 of doctors and things I've had to go to.

7 Q. (By Mr. Brown) Who is Laura
8 Knight?

9 A. That's my aunt. She's had back
10 surgery.

11 Q. You hadn't never made phone
12 calls from her house, have you?

13 A. No. She lives in Lanett.

14 Q. Lanett?

15 A. Uh-huh.

16 Q. I'll go by her house on the way
17 home. The other phone numbers -- you
18 said your number is 863-1591. That's
19 your mom?

20 A. Huh-uh (negative).

21 Q. Or that's your mother-in-law?

22 A. That's -- my mother-in-law is
23 6195, my mother-in-law is. I don't think

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1 I got it wrote in there.

2 Q. Whose number 863-1591?

3 A. It ain't got no name on it?

4 Q. It says, "my NO."

5 A. Oh, I don't know. I don't know
6 what that number is doing in there then.
7 "My NO." I don't know. Oh. At one
8 time, I had a cell phone. At one time,
9 but I don't have it no more. That's what
10 that was. My phone.

11 Q. Okay.

12 A. That's the reason I had "My NO"
13 on it. At one time, I had a cell phone.

14 Q. All right. Did you ever call
15 CMI --

16 A. No.

17 Q. -- from your cell phone?

18 A. Huh-uh. It costs too much
19 minutes. I had to buy my minutes, and I
20 just used my mother-in-law's.

21 Q. Was it a prepaid phone?

22 A. Yeah.

23 Q. Was it one of ones that you

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1 like -- I don't know how prepaid --

2 A. Go out at Wal-Mart and buy your
3 minutes.

4 Q. Okay. So, you didn't get a bill
5 from like Sprint or something like that?

6 A. No.

7 MR. BROWN: Who is the provider
8 in these areas?

9 MR. TINNEY: I have no idea. I
10 mean, we've got -- are you talking about
11 all cell phone providers?

12 THE WITNESS: Unice1.

13 MR. TINNEY: Cingular, Unice1.
14 And that's it really.

15 MR. BROWN: Because, I mean, I
16 have T-Mobile, and I have nothing up
17 here.

18 Q. Who is Dr. Russell Peterson?

19 A. That's the one disability sent
20 me to the first time.

21 Q. Okay.

22 A. He's out here in Roanoke. He
23 built a new office right out yonder on

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1 431.

2 Q. 469 Price Street, Suite D,
3 Roanoke?

4 A. He's got a new office out there
5 on 431 now.

6 Q. Okay.

7 A. That's who disability sent me to
8 first.

9 Q. And then Dr. Bruce Myles,
10 M-y-l-e-s, Pava, P-a-v-a.

11 A. That's Birmingham.

12 Q. Okay. On Montclair Road. He's
13 the one that disability sent you to?

14 A. Disability sent me to them after
15 they sent me to the psychiatrist.

16 Q. And that was Robin Kurtz?

17 A. Robin Kurtz.

18 Q. And Dr. Busby, who is Dr. Busby?

19 A. That's a dentist. I was calling
20 around to get my teeth -- my top teeth
21 pulled, and he was booked up, so I had to
22 get another one?

23 Q. Okay. And that would have been

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1 David Towers?

2 A. Yeah, that's who pulled my
3 teeth.

4 Q. Okay.

5 MR. BROWN: If you want to take
6 about five minutes and let me look
7 through my notes.

8 (A short break was taken.)

9 Q. (By Mr. Brown) Maybe we're
10 wrapping up. Maybe I'm close to being
11 through. And I'm sorry you've had to
12 listen to me drum on so long.

13 A. That's all right.

14 Q. Have you told me about every
15 conversation that you had with
16 Ms. Heppes?

17 A. As far as I know. I had so
18 many, I couldn't really tell you exactly
19 how many I did have.

20 Q. Okay.

21 A. And from September until I had
22 my surgery, I really don't know.

23 Q. Okay. And if you think of any

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1 other conversations, will you please just
2 let Mr. Tinney know?

3 A. Yeah.

4 Q. I mean, you may be middle of
5 the night tonight and sit straight up in
6 bed thinking, "Oh. There was one
7 conversation I needed to tell him about."

8 And you've told me everything
9 that you can remember about the
10 conversations?

11 A. Yeah.

12 Q. And you've told me everything
13 that you can remember that she told you,
14 and you've told me everything that you
15 can remember that you told her?

16 A. Uh-huh (affirmative).

17 Q. And have you told me about every
18 conversation that you can remember with
19 Dr. Howorth's office?

20 A. Yeah.

21 Q. Okay. Have you told me about --
22 strike that.

23 Before we get there, did you

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1 have any conversations with the people at
2 the hospital before you went to do the
3 preregistration?

4 A. Huh-uh. I went down there and
5 got preregistered on Friday. And then
6 she checked my blood pressure, and she
7 kept me for a little while until my blood
8 pressure came down. And then she sent me
9 home.

10 Q. Okay. And you've told me
11 everything that you know to support your
12 claim that CMI wouldn't let you have
13 surgery; right?

14 A. They wouldn't let me have it. I
15 don't understand.

16 Q. But you've told me every
17 reason --

18 A. Yeah. Yeah.

19 Q. Okay.

20 A. They kept saying they needed
21 more doctors.

22 MR. TINNEY: You don't need to
23 go over it again.

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1 Q. (By Mr. Brown) Doctors and
2 records; right?

3 A. Doctors and records.

4 Q. I think we've established, you
5 don't know if CMI ever actually talked
6 with Dr. Shirah, do you?

7 A. He called Victoria. The day
8 after he found out I had to have surgery,
9 he called her, Dr. Shirah did.

10 Q. Okay. Is that while you were in
11 the room?

12 A. Yeah.

13 Q. Okay.

14 A. He said, "I'll go get in touch
15 with her and see what she wants -- what
16 doctor she wants to send you to, and I'll
17 let you know."

18 Q. Okay. So, he left the room, had
19 a conversation, and came back?

20 A. Had the conversation with her.
21 "She said she'd get with you and tell you
22 where to go."

23 Q. Okay. And she called you?

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1 A. She called me at my
2 mother-in-law's and set me up an
3 appointment in Alex City.

4 Q. Did Ms. Heppes ever tell you, "I
5 don't think you need surgery"?

6 A. Well, to start with, she told me
7 she thought that I could do therapy. And
8 I just told her on the phone, I said,
9 "Dr. Shirah said it's tore up. You can't
10 do therapy on something that's tore up."

11 Q. But then after Dr. Howorth said
12 you need to have surgery --

13 A. Yeah.

14 Q. -- did she ever call you and
15 tell you, "I'm not going to -- I don't
16 think you need surgery"?

17 A. No, she didn't say that.

18 Q. Okay. She said, "I've got to
19 get somebody else to look at it"?

20 A. Yes.

21 Q. Okay. And nobody from CMI told
22 you that, "you don't need surgery";
23 right?

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1 A. Not as I know of.

2 Q. Okay.

3 A. After he told them I needed
4 surgery, you know --

5 Q. So, they never denied it, it
6 just took them too long to approve it?

7 A. It just took them too long to
8 approve it, you know, to get my
9 surgery -- to approve it.

10 MR. TINNEY: Well, now, I'm
11 going to object to the form of "denied."
12 I mean, we've gone over the call, you
13 know, stopping the surgery. I don't know
14 what your definition of "denied" is --

15 MR. BROWN: Okay.

16 MR. TINNEY: -- but it was
17 stopped.

18 Q. (By Mr. Brown) Well, let me ask
19 it this way: They never told you, "You
20 cannot have surgery"?

21 A. No, they didn't tell me I
22 couldn't have it. They just told me they
23 needed more doctors to look at it.

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1 Q. Okay.

2 A. They just kept saying that every
3 week.

4 Q. What information do you say or
5 do you contend that CMI withheld from
6 you? What information do you think they
7 had that they should have told you that
8 they didn't tell you?

9 A. I don't know. Just the only
10 thing is she said she wanted two more
11 doctors to look at it and she had to have
12 paperwork -- proper paperwork. I don't
13 know what she meant by that.

14 Q. Okay. If somebody told you that
15 you could go back to a doctor for your
16 shoulder, would you go?

17 A. If I thought it would do any
18 good. Because he told me the last time I
19 was there all he could do was give me
20 Cortisone, that's about all he could do
21 for it.

22 Q. But if somebody said you could,
23 you'd give it a try?

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1 A. Yeah, you know, if they could
2 help it.

3 Q. Okay.

4 MR. BROWN: I think that's all
5 the questions that I have. If I could
6 reserve to do a follow-up if we learn
7 anything else about any additional
8 medical treatment that he could possibly
9 have had. I'm not going to come back in
10 here and rehash anything.

11 MR. TINNEY: No problem.

12 MR. BROWN: Thank you.

13 ~~oOo~~

14 The deposition of
15 Emory S. Brown
16 concluded at 1:45 p.m.
17 on April 10, 2006

18 ~~oOo~~

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